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E-Filed December 18, 2006

6 and

7 Lenard E. Schwartzer
 Nevada Bar No. 0399
 8 Jeanette E. McPherson
 Nevada Bar No. 5423
 9 Schwartzer & McPherson Law Firm
 2850 South Jones Boulevard, Suite 1
 10 Las Vegas, Nevada 89146-5308
 Telephone: (702) 228-7590
 Facsimile: (702) 892-0122
 12 E-Mail: bkfilings@s-mlaw.com
 Attorneys for Debtors

13 **UNITED STATES BANKRUPTCY COURT**
DISTRICT OF NEVADA

14 In re:

15 USA COMMERCIAL MORTGAGE COMPANY,

Debtor.

Case Nos. BK-S-06-10725 LBR
 Case Nos. BK-S-06-10726 LBR
 Case Nos. BK-S-06-10727 LBR
 Case Nos. BK-S-06-10728 LBR
 Case Nos. BK-S-06-10729 LBR

16 In re:

17 USA CAPITAL REALTY ADVISORS, LLC,

Debtor.

Chapter 11

18 In re:

19 USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,

Debtor.

**NOTICE OF FILING OF TRANSCRIPTS OF
 2004 EXAMINATIONS OF JOSEPH D.
 MILANOWSKI AND USA INVESTMENT
 PARTNERS, LLC IN SUPPORT OF
 DEBTORS' COMBINED MOTION IN
 LIMINE AND MEMORANDUM IN
 SUPPORT REGARDING THE
 DECLARATION OF VICTORIA S. LOOB IN
 SUPPORT OF OBJECTION OF USA
 INVESTMENT PARTNERS, LLC, JOSEPH
 MILANOWSKI AND THOMAS HANTGES
 TO CONFIRMATION OF THE DEBTORS'
 THIRD AMENDED JOINT CHAPTER 11
 PLAN OF REORGANIZATION**

20 In re:

21 USA CAPITAL FIRST TRUST DEED FUND, LLC,

Debtor.

Relevant to Confirmation Hearing

22 In re:

23 USA SECURITIES, LLC,

Debtor.

24 Affects:

- All Debtors
- USA Commercial Mortgage Company
- USA Securities, LLC
- USA Capital Realty Advisors, LLC
- USA Capital Diversified Trust Deed Fund, LLC
- USA First Trust Deed Fund, LLC

Date: December 19, 2006

Time: 10:00 a.m.

1 Debtors USA Commercial Mortgage Company (“USACM”), USA Capital First Trust
 2 Deed Fund (“FTDF”), USA Capital Realty Advisors, LLC (“USA Realty”), and USA Securities,
 3 LLC (“USA Securities”) (collectively, the “Debtors”), by and through their counsel and as
 4 represented in the “Debtors’ Combined Motion In Limine And Memorandum In Support
 5 Regarding The Declaration Of Victoria S. Loob In Support Of Objection Of USA Investment
 6 Partners, LLC, Joseph Milanowski And Thomas Hantges To Confirmation Of The Debtors’ Third
 7 Amended Joint Chapter 11 Plan Of Reorganization” hereby respectfully submit the transcript of
 8 the 2004 Examination of USA Investment Partners, LLC attached hereto as Exhibit 1 and the
 9 transcript of the 2004 Examination of Joseph D. Milanowski attached hereto as Exhibit 2.

10 DATED: December 18, 2006.

11 /s/Lenard E. Schwartzer

12 Lenard E. Schwartzer (Nevada Bar No. 0399)
 13 Jeanette E. McPherson (Nevada Bar No. 5423)
 14 SCHWARTZER & MCPHERSON LAW FIRM
 15 2850 South Jones Blvd., Suite 1
 16 Las Vegas, Nevada 89146

17 and

18 Annette W. Jarvis (Utah Bar No. 1649)
 19 Steven C. Strong (Utah Bar No. 6340)
 20 RAY QUINNEY & NEBEKER P.C.
 21 36 South State Street, 14th Floor
 22 P.O. Box 45385
 23 Salt Lake City, Utah 84145-0385

SCHWARTZER & MCPHERSON LAW FIRM
 2850 South Jones Boulevard, Suite 1
 Las Vegas, Nevada 89146-5308
 Tel: (702) 228-7590 • Fax: (702) 892-0122

EXHIBIT 1

In The Matter of:

v.

DEPOSITION OF:

***USA Investment Partners, LLC
Volume 1
December 14, 2006***

***Associated Reporters of Nevada
Certified Court Reporters
2300 W. Sahara Avenue
Suite 770
Las Vegas, NV 89102
(702) 382-8778 FAX: (702) 382-2050***

Word Index Included

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:)
USA COMMERCIAL MORTGAGE)
COMPANY,)
Debtor.)
Case No.
BK-S-06-10725 LBR

In re:)
USA CAPITAL REALTY ADVISORS,)
LLC,)
Debtor.)
Case No.
BK-S-06-10726 LBR
Case No.
BK-S-06-10727 LBR
Case No.
BK-S-06-10728 LBR
Case No.
BK-S-06-10729 LBR
)
Chapter 11

In re:)
USA CAPITAL FIRST TRUST DEED)
FUND, LLC.)
Debtor.)
Jointly
Administered
Under
Case No.
BK-S-06-10725 LBR
)
)

Affects:
x All Debtors)
USA Commercial Mortgage)
Company)
USA Securities, LLC)
USA Capital Realty)
Advisors, LLC)
USA Capital Diversified)
Trust Deed Fund, LLC)
USA Capital First Trust)
Deed Fund, LLC)
)

Page 2

1 REPORTER'S CERTIFICATE OF NONAPPEARANCE
2 FOR THE DEPOSITION OF USA INVESTMENT PARTNERS, LLC

3

4 Scheduled for Thursday, December 14, 2006

5 At 9:00 a.m.

6 At 4484 South Pecos Road

7 Las Vegas, Nevada

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25 Reported by: Teri R. Ward, CCR NO. 839

1 APPEARANCES:

2 For Debtors and Debtors-in-Possession:

3 LENARD SCHWARTZER, ESQ.
Schwartz & McPherson Law Firm
4 2850 South Jones Boulevard
Suite 1
5 Las Vegas, Nevada 89146

6 For Mary Peterson:

7 WILLIAM WRAY, ESQ.
O'Reilly Law Group
8 325 South Maryland Parkway
Las Vegas, Nevada 89101

9 For USA Investment Partners, LLC:

10 RUSSEL WALKER, ESQ.
Woodbury & Kessler
11 265 East 100 South
12 Suite 300
Salt Lake City, UT 84111

13 Also Present: James Atkinson, Mesirow Financial

15 E X H I B I T S

16 Number Page Description

17 (None)

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1 LAS VEGAS, NEVADA; THURSDAY, DECEMBER 14, 2006

2 9:00 a.m.

3 -00-

4 Thereupon,

5 I, Teri R. Ward, Certified Court Reporter,

6 hereby declare the following:

7 That pursuant to the request of Lenard
8 Schwartzer, Esq., counsel for Debtors and
9 Debtors-in-Possession in the above-entitled cause, I
10 did appear in the offices of USA Capital at 4484
11 South Pecos Road in the City of Las Vegas, County of
12 Clark, State of Nevada, at 9:00 a.m. on Thursday,
13 December 14, 2006, for the purposes of placing under
14 oath and reporting the testimony of USA Investment
15 Partners, LLC in the above-entitled cause;

16 That I remained at said location
17 until 9:19 a.m. on said date.

18 The following is a true, complete,
19 and accurate transcription of the proceedings held
20 at that time:

21 MR. WALKER: Russell Walker with
22 Woodbury & Kessler in Salt Lake City at 265 East 100
23 South, No. 300, Salt Lake City 84111. Representing
24 USA Investment Partners, LLC.

25 MR. SCHWARTZER: Okay, Lenard Schwartzer

1 is present, and --

2 MR. WRAY: William Wray representing
3 Mary Peterson.

4 MR. SCHWARTZER: Okay. And Jim, you
5 want to make your appearance?

6 MR. ATKINSON: Jim Atkinson, Mesirow
7 Financial, Interim Management.

8 MR. SCHWARTZER: Okay, this is the time
9 and place set for the examination under Rule 2004 of
10 USA Investment Partners. Our records indicate that
11 the order was entered by the court, and a subpoena
12 for production of documents as well as the order was
13 properly served on USA Investment Partners,
14 approximately, on the 1st of the month.

15 And I understand that Elaine Munson has
16 been in contact with you. We know that your client
17 and you are fully aware of the time and place for
18 the examination. And we also understand that there
19 had been some negotiations about -- between you and
20 -- between the deponent and through its
21 representative Mr. Walker and Ms. Munson regarding
22 the possibility of reaching agreement to have this
23 examination at a later date and have the production
24 of documents at a later date.

25 And it is my understanding that those

1 negotiations never actually reached a conclusion,
2 and there is no agreement. And therefore, it is the
3 position of the Debtor and Debtor-in-Possession that
4 pursuant to the court order and the subpoena, your
5 client is in default in not producing the documents
6 that were requested, and in default for not
7 appearing to have his examination under oath taken
8 at this time.

9 MR. WALKER: I appreciate your client's
10 position. Let me state my client's position for the
11 record. We did have negotiations, that is
12 Elaine Munson and I. She representing the debtor.
13 I representing Investment Partners and
14 Joseph Milinowski.

15 I think we came to an agreement on most
16 of the points, but were unable to agree on a final
17 point. Just for the record, we had agreed that we
18 would have the ten business days as set forth in
19 local Rule 2004(b) and (c) that we agreed.

20 And we still will comply that the
21 documents subpoenaed for this examination will be
22 produced on Monday by 5:00 o'clock p.m., I assume
23 over at the offices there at USA Commercial Mortgage
24 at least for those entities, HMA Sales Investor
25 Partner Six, Investment Partners.

1 We have not had adequate time to prepare
2 to get the documents together for Mr. Milinowski,
3 and I believe that's scheduled for tomorrow at 9:00
4 o'clock. But then we will produce those other
5 records as of Monday, the 18th.

6 We also agreed that if those records
7 were adequate, that we would continue the
8 examinations until the week of January 10th. We're
9 still willing to do that.

10 We object to these 2004 orders and the
11 subpoenas as not being in compliance with local Rule
12 2004 with Bankruptcy Rule 9030 and 9016 and are
13 filing an objection with the court.

14 So I don't anticipate that
15 Mr. Milinowski will be present tomorrow either, and
16 that none of the parties was present. But I believe
17 the parties could come to an agreement and have
18 those examinations, as I said a moment ago.

19 MR. SCHWARTZER: Okay. And did you by
20 any chance file the objection that you mentioned
21 with regard to the two entities that were set for
22 the examinations yesterday? Has that been filed
23 yet?

24 MR. WALKER: No, it's being filed
25 probably within the hour.

1 MR. SCHWARTZER: Okay, because I looked
2 for it yesterday, and it wasn't there.

3 MR. WALKER: Yeah, no, it was delayed a
4 little bit. Obviously, as you understand, we have
5 that hearing tomorrow again on Tremos and other
6 issues. So there's a number of issues for the
7 court.

8 Just for the record, that who will be
9 representing the debtor tomorrow at the examination
10 scheduled and who's actually going to be handling
11 the hearing tomorrow?

12 MR. SCHWARTZER: Well, I will be
13 handling the hearing tomorrow, and I believe my
14 associate Jason Imes will be handling the
15 examination tomorrow.

16 MR. WALKER: Okay. I'll be there as
17 well at the hearing, and perhaps we can discuss
18 further these issues tomorrow.

19 MR. SCHWARTZER: Actually, with regard
20 to discovery, you really have to discuss it with
21 Elaine.

22 MR. WALKER: Okay. All right.

23 MR. SCHWARTZER: Okay, this deposition
24 could be concluded. You understand it is our
25 position your client is in violation of the orders,

1 and we will be filing the appropriate motion of
2 that.

3 MR. WALKER: Well, I'm optimistic the
4 parties can get together. I guess my question for
5 you is are you still interested in having us produce
6 the documents on Monday?

7 MR. SCHWARTZER: Well, that would
8 certainly make your client less in contempt of the
9 subpoena. It's sort of like asking me would I like
10 your client, Mr. Milinowski, to produce about \$50
11 million in cash to pay back the moneys owed by USA
12 Investment Partners. The answer is --

13 MR. WALKER: Well, we'll talk about that
14 tomorrow.

15 MR. SCHWARTZER: -- yes. The answer is
16 yes.

17 MR. WALKER: He would like to do that as
18 well, so --

19 MR. SCHWARTZER: Yes.

20 MR. WALKER: All right, thank you.

21 MR. SCHWARTZER: Thank you, bye.

22 MR. WALKER: Bye.

23 MR. WRAY: No, I don't want a copy.

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1 CERTIFICATE OF REPORTER

2
3 STATE OF NEVADA)
4 COUNTY OF CLARK)
5
SS:
)

6 I, Teri R. Ward, a duly commissioned Notary
7 Public, Clark County, State of Nevada, do hereby
certify:

8 That I reported the proceedings commencing on
Thursday, December 14, 2006, at 9:00 a.m.;

9
10 That I thereafter transcribed my said shorthand
notes into typewriting; and that the typewritten
transcript is a complete, true and accurate
11 transcription of said shorthand notes.

12 I further certify that I am not a relative,
employee, or independent contractor of counsel of
13 any of the parties; nor a relative, employee, or
independent contractor of the parties involved in
14 said action; nor do I have any other relationship
with any of the parties or with counsel of any of
15 the parties involved in the action that may
reasonably cause my impartiality to be questioned.

16
17 IN WITNESS WHEREOF, I have hereunto set my hand
in my office in the County of Clark, State of
Nevada, this _____ day of _____, 2006.

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Teri R. Ward, CCR NO. 839

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EXHIBIT 2

In The Matter of:

v.

DEPOSITION OF:

***Joseph D. Milanowski
Volume 1
December 15, 2006***

***Associated Reporters of Nevada
Certified Court Reporters
2300 W. Sahara Avenue
Suite 770
Las Vegas, NV 89102
(702) 382-8778 FAX: (702) 382-2050***

Word Index Included

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

)

In Re:) Case No.
USA COMMERCIAL MORTGAGE COMPANY,) BK-S-06-10725
Debtor.)

)

In Re:)
USA CAPITAL REALTY ADVISORS, LLC.) Case No.
Debtor.) BK-S-06-10726

)

In Re:)
USA CAPITAL DIVERSIFIED TRUST) Case No.
DEED FUND, LLC.,) BK-S-06-10727
Debtor.)

)

In Re:)
USA CAPITAL FIRST TRUST DEED FUND) Case No.
Debtor.) BK-S-06-10728

)

In Re:) Case No.
USA SECURITIES, LLC.,) BK-S-06-10729
Debtor.)

)

AFFECTS:)
All Debtors.)

)

SCHEDULED DEPOSITION OF JOSEPH D. MILANOWSKI

To Be Taken on Friday, December 15, 2006
At 9:00 o'clock a.m.
At 4484 South Pecos
Las Vegas, Nevada

REPORTED BY: DONNA E. MIZE, CCR NO. 675

1 APPEARANCES:

2 For Debtors:

3 JEANETE McPHERSON, ESQ.
4 Schwartz & McPherson Law Firm
5 2850 South Jones Boulevard
6 Suite 1
7 Las Vegas, Nevada 89146

6 For Weddell & Spectrum Financial:

7 ELISSA F. CADISH, ESQ.
8 Hale Lane
9 3930 Howard Hughes Parkway
10 Fourth Floor
11 Las Vegas, Nevada 89109

11 For Joseph Milanowski:

12 ELIZABETH LOVERIGE (TELEPHONICALLY)
13 For Russell Walker
14 Woodbury & Kesler
15 265 East 100 South
16 Suite 300
17 Salt Lake City, Utah 84111

17 Also Present: SUSAN SMITH

18

19 E X H I B I T S

20 Exhibit No.	Description	Page
21 1 Order		4
22 2 Subpoena		4
23 3 Affidavit of Service		4
24		
25		

1 MS. McPHERSON: We are here today and this is
2 the time set for the examination of Joseph D.
3 Milanowski. Jeanette McPherson on behalf of the
4 debtors and debtors in possession.

5 MS. CADISH: Elissa Cadish on behalf of Ron
6 Weddell and Spectrum Financial.

7 MS. McPHERSON: Susan Smith of Mesirow is
8 also present.

9 We have been informed that Mr. Milanowski is
10 not going to be appearing today, and we have waited
11 approximately five minutes for him to show up just in
12 case. We will be contacting his counsel Russell
13 Walker, however, he has indicated that Mr. Milanowski
14 will not be appearing and that he will be in court this
15 morning, bankruptcy court.

16 I would like to submit as Exhibit 1 an order
17 requiring Joseph D. Milanowski to appear for
18 examination pursuant to Federal Bankruptcy Rule 2004,
19 which was entered on December 8, 2006 to be marked as
20 Exhibit 1.

21 To be marked as Exhibit 2 is a subpoena for
22 Rule 2004 Examination, and as Exhibit 3 an affidavit of
23 service which demonstrates that Mr. Milanowski was
24 served on Monday, December 11, 2006 with the subpoena
25 and the order requiring his appearance here today.

1 (Exhibits 1-3 marked)

2 MS. McPHERSON: We will call Mr. Walker just
3 to make sure that he is not available and he is in
4 court as he indicated.

5 May I speak to Mr. Walker, please?

6 THE SECRETARY: He is not in the office
7 today. Would you like his voice mail?

8 MS. McPHERSON: Do you know if anybody in
9 your office will be appearing today in the 2004 Exam
10 for Mr. Milanowski?

11 THE SECRETARY: I don't know. Would you like
12 to talk to his secretary, Liza Loverige. Do you want
13 to talk to her?

14 MS. McPHERSON: Yes.

15 MS. LOVERIGE: This is Elizabeth Loverige.

16 MS. McPHERSON: Hello Elizabeth. My name is
17 Jan McPherson. I'm calling in connection with the USA
18 Commercial bankruptcy case. Mr. Walker had been making
19 telephone appearance in connection with the 2004
20 Examinations. He indicated he would be in court this
21 morning, however, I wanted to call just to verify that
22 nobody else would be --

23 MS. LOVERIGE: I can go ahead and make the
24 same telephonic appearance.

25 MS. McPHERSON: Go ahead. The court reporter

1 is taking down what you are going to say.

2 MS. LOVERIGE: This is Elizabeth leverage at
3 Woodbury & Kesler on behalf of Joseph Milanowski.
4 Mr. Milanowski will not be appearing today. We filed a
5 motion for a protective order.

6 Ms. McPherson, I believe there was some
7 document production that was scheduled for Monday that
8 Russ had mentioned; is that correct?

9 MS. MCPHERSON: Yes.

10 MS. LOVERIGE: He mentioned that he would be
11 appearing at that. Were you aware of that?

12 MS. MCPHERSON: No, I am not.

13 MS. LOVERIGE: I believe from what he had
14 told me yesterday that was his intention.

15 MS. MCPHERSON: Are you talking about the
16 examination of Vicky Lube?

17 MS. LOVERIGE: No. I know he is appearing
18 there on Monday. I don't know about -- he mentioned
19 something about documents on Monday afternoon.

20 MS. MCPHERSON: Is that it?

21 MS. LOVERIGE: That's it.

22 MS. MCPHERSON: Elizabeth, how do you spell
23 your last name?

24 MS. LOVERIGE: L-O-V-E-R-I-G-E.

25 MS. MCPHERSON: Thank you. That is it.

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2 (Whereupon, the proceeding
3 concluded at 9:08 a.m.)

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1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)
3 COUNTY OF CLARK)
)
 ss.

4 I, Donna E. Mize, Certified Court Reporter,
5 do hereby certify:

6 That I reported in shorthand (Stenotype) the
7 proceedings had in the above-entitled matter at the
8 place and date indicated.

9 That I thereafter transcribed my said
10 shorthand notes into typewriting, and that the
11 typewritten transcript is a complete, true and accurate
12 transcription of my said shorthand notes.

13 I further certify that I am not a relative,
14 employee or independent contractor of counsel of any of
15 the parties; nor a relative, employee or independent
16 contractor of the parties involved in said action; nor
17 a person financially interested in the action.

18 IN WITNESS WHEREOF, I have set my hand in my
19 office in the County of Clark, State of Nevada, this
20 16th day of December, 2006.

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DONNA E. MIZE, NV CCR 675